

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 29-30, 2003
Room 514-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator U. L. "Rip" Gooch
Senator Chris Steineger
Representative Jerry Henry
Representative Andrew Howell
Representative Jan Pauls
Representative Candy Ruff
Representative Sharon Schwartz

Members Absent

Senator Karin Brownlee
Senator Stan Clark
Senator Duane Umbarger
Representative Dan Williams

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Mitch Rice, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Tom Day, Kansas Corporation Commission
Ron Hein, National Cooperative Refinery Association
Whitney Damron, Kansas Gas Service
Karl Mueldener, Kansas Department of Health and Environment
Mike Cochran, Kansas Department of Health and Environment

Cina Poyer, Kansas Department of Health and Environment
J. P. Small, Koch Industries
Ron Gaches, The Williams companies, Inc.
Jeff Ivy, The Williams Companies, Inc.
Mike Hutfles, Kansas Governmental Consulting
Reid Stacey, Kansas Department of Social and Rehabilitation Services
Ron Seaber, Hein Law Firm
Dave Halferty, Kansas Department of Administration
Kraig Knowlton, Kansas Department of Administration
Jim Gardner, Kansas Department of Administration
Linden Appel, Kansas Department of Corrections
Faith Loretto, Kansas Department of Administration
Leslie Kaufman, Kansas Farm Bureau
Jennifer Springer, Behavioral Science Regulatory Board
David L. Pope, Kansas Department of Agriculture, Division of Water Resources
Leland E. Rolfs, Kansas Department of Agriculture, Division of Water Resources
Thomas Huntzinger, Kansas Department of Agriculture
Nialson Lee, Kansas Department of Social and Rehabilitation Services

May 29, 2003

The meeting was called to order by Chairman Holmes at 1:45 p.m. May 29, 2003. He recognized Karl Mueldener, Kansas Department of Health and Environment (KDHE), who introduced Mike Cochran and Cina Poyer to discuss the proposed rules and regulations noticed for hearing relating to Underground Hydrocarbon Storage Wells and Associated Brine Ponds. KAR 28-45-2, 28-45-3, 28-45-4, 28-45-5, 28-45-6, 28-45-7, 28-45-8, 28-45-9, 28-45-10, and 28-45-11 revoked. KAR 28-45-2a, definitions; KAR 28-45-3a, permit required; KAR 28-45-4a, well conversions and reentry; KAR 28-45-5a, temporary facility permit; KAR 28-45-6a, final permit; KAR 28-45-7a, public notice; KAR 28-45-8a modification and transfer of a final permit; KAR 28-45-9a, signatories for permit applications and reports; KAR 28-45-10a, siting requirements for new underground hydrocarbon storage wells and facilities; KAR 28-45-11a, financial assurance for underground hydrocarbon storage facility closure; KAR 28-45-12, operations and maintenance plan; KAR 28-45-13, emergency response plan and safety and security measures; KAR 28-45-14, design and construction of underground hydrocarbon storage wells; KAR 28-45-15, monitoring; KAR 28-45-16, testing and inspections; KAR 28-45-17, groundwater monitoring; KAR 28-45-18, record requirements and retention; KAR 28-45-19, well workovers; KAR 28-45-20, plugging requirements; KAR 28-45-21, underground hydrocarbon storage fees; KAR 28-45-22, permit required for a brine pond; KAR 28-45-23, brine pond application and permit; KAR 28-45-24, public notice for a brine pond; KAR 28-45-25, renewal, modification and transfer of a brine pond permit; KAR 28-45-26, signatories for brine pond permit applications and reports; KAR 28-45-27, financial assurance for brine pond closure; KAR 28-45-28, design, construction, and maintenance of brine ponds; KAR 28-45-29, groundwater monitoring for brine ponds and KAR 28-45-30, brine pond closure requirements.

Mike Cochran presented background information concerning the statute passed by the 2001 Kansas Legislature after the disaster in Hutchinson, which required the development of the proposed rules and regulations (Attachment 1). Cina Poyer presented information to the Committee, including geological maps and evaluations of the current locations of storage facilities in Kansas (Attachment 2). Ms. Poyer went over the proposed requirements that will address cavern integrity and monitoring, including the ten most important safety requirements. The presentation also included an estimated cost of implementing the new requirements and how they will be funded.

Concerning KAR 28-45-2a, definitions, several members raised questions on various definitions. Concerning "Municipal population center," a member asked how the three-mile limit would affect the Yaggy facility. Mr. Cochran stated that it was not the intention of the new regulations to prevent Yaggy from reopening and the Department will do further checking to ensure this issue has been dealt with correctly. Committee members suggested that the Department review the definition of "Freshwater" for consistency with other laws and regulations. Regarding the definition of "Liquid petroleum gas," a member questioned if it was the intent of the legislation passed to include crude oil. It was noted by Committee members that the term "natural gas" should be defined in this set of regulations for clarification since these regulations exclude its storage, as well as considering the addition of a definition for "useable water."

In the discussion of KAR 28-45-4a, well conversions and reentry, members questioned the allowance of reentry of a plugged liquified petroleum gas or hydrocarbon storage well after the disaster at Yaggy field. In response to this question, Mr. Cochran stated that a well could be plugged for economic reasons but could be safely reentered based upon evidence of the reliability and integrity of the well gathered from testing, which these proposed rules and regulations require. Staff suggested perhaps adding language to the effect that any well that has been previously plugged and drilled on and after the effective date of these regulations should be treated as a new well.

It was suggested by a member that, in KAR 28-45-6a and elsewhere in the regulations, if a final permit is denied, reasons for the denial should be provided. Additionally, Staff recommended that in KAR 28-45-6a, page 3, (2) the document adopted by reference, UICLPG-9, contains another document within it which is an examination manual for AAPG methods and explorations, and that document should be adopted by reference as well.

In response to comments from a member, Mr. Cochran stated that in KAR 28-45-7a, and elsewhere in the regulations, language could be added that public notice required by the regulations also be published in the *Kansas Register*. Concerning KAR 28-45-10a and elsewhere in the regulations, there was discussion about locating a facility in a flood plain area. Mr. Cochran and Ms. Poyer agreed to take the concern to the Department for further study regarding the need for limiting or prohibiting such facilities in a flood plain.

KAR 28-45-12 relates to operations and maintenance plans that operators must submit to the Department. The Committee raised a concern that significant security issues arise as a result of providing the detailed information required by the regulation. Members suggested the Department review the language in the Open Records Act (particularly at KSA 45-221 (45)), to see if there is ample protection for such information. If there is a

determination that greater protection is necessary, the Department may need to come back to the Legislature for changes to the statute.

Pertaining to KAR 28-45-17, and elsewhere in the regulations, a member was concerned that the tolerance level established for chlorides was too high and should be reviewed with an eye to reducing the level.

Mike Cochran and Cina Poyer next reviewed the proposed rules and regulations noticed for hearing by KDHE on Underground Natural Gas Storage Wells in Bedded Salt. KAR 28-45a-1, definitions; KAR 28-45a-2, permit required; KAR 28-45a-3, well conversions and reentry; KAR 28-45a-4, application for permit; KAR 28-45a-5, public notice; KAR 28-45a-6, modification and transfer of a permit; KAR 28-45a-7, signatories for permit applications and reports; KAR 28-45a-8, siting requirements for new underground natural gas storage wells; KAR 28-45a-9, financial assurance for underground natural gas storage facility closure; KAR 28-45a-10, operations and maintenance plan; KAR 28-45a-11, emergency response plan and safety and security measures; KAR 28-45a-12, design and construction of underground natural gas storage wells; KAR 28-45a-13, monitoring; KAR 28-45a-14, testing and inspections; KAR 28-45a-15, groundwater monitoring; KAR 28-45a-16, record requirements and retention; KAR 28-45a-17, well workovers; KAR 28-45a-18, plugging requirements and KAR 28-45a-19, underground natural gas storage fees.

The same comments noted in the previous proposed rules and regulations that apply to hydrocarbon storage wells and associated brine ponds were noted for the appropriate corresponding rules and regulations for natural gas storage facilities. Staff noted that, in KAR 28-45a-12, subsection (d), the reference should be KAR 28-45-14. Further, Committee members wonder how the mechanical integrity test could be performed when the area between the two casings was filled with cement.

In response to questions regarding the economic impact statement, Cina Poyer stated that the fees established in the regulations support the statutory requirements directed by the Legislature. She indicated that the total annual fees to be generated would be approximately \$340,000. The Committee commended the Department on the thorough detail with which the economic impact statement had been completed.

Finally, concern was expressed relative to both sets of regulations as they allow discretionary authority for the Secretary to act or not. To the extent feasible, the Committee suggested that the Secretary amend rules and regulations as necessary to include the areas wherein discretionary authority has been used.

Mr. Mueldener, Ms. Poyer, and Mr. Cochran were thanked for their presentations.

Chairman Holmes recessed the meeting until 9:00 a.m. May 30, 2003.

May 30, 2003
Morning Session

Chairman Holmes reconvened the meeting on May 30, 2003, at 9:15 a.m. He called on Nialson Lee, Department of Social and Rehabilitation Services (SRS), to speak to the proposed rules and regulations noticed for hearing concerning prior authorization of pharmaceutical products. Mr. Lee explained two medications were being added to the prior authorization list in KAR 30-5-64: a nonsteroidal, anti-inflammatory drug meloxicam and a triptans eletriptan Hbr. There were no questions regarding these changes. The Chairman requested that the Department keep Dr. Wolff advised of any proposed changes in this area, since a shorter 30-day public comment period applies to this prior authorization regulation.

Mr. Lee continued with KAR 30-5-89 and KAR 30-5-89a concerning scope of home health services, and explained the changes as proposed. There being no questions, Chairman Holmes thanked Mr. Lee for his appearance before the Committee.

Chairman Holmes next recognized Dave Halferty, Kansas Department on Aging, to address the proposed adult care home program rules and regulations noticed for hearing. KAR 30-10-14, prospective reimbursement; KAR 30-10-15a, reimbursement; KAR 30-10-17, cost reports; KAR 30-10-18, rates of reimbursement; 30-10-19, rates, effective dates; KAR 30-10-21, reserve days; and KAR 30-10-23b, cost allowed with limitations.

Mr. Halferty explained that the proposed rules and regulations were the result of a proviso in HB 2444 from the 2003 Legislative Session. He explained that this proviso changes how the Department will calculate the rate of reimbursement by using base-year cost information. Mr. Halferty responded to general questions about how the new system will work and how it will affect nursing home providers. He noted two changes the Department will make in KAR 30-10-18 to clarify language before the public hearing.

Mr. Halferty answered general questions from the Committee concerning KAR 30-10-21 and how the reserve days would affect the patient and the care facility. Chairman Holmes thanked him for appearing before the Committee.

Mary Prewitt was introduced by Chairman Holmes to address the proposed rules and regulations noticed for hearing by Kansas Board of Regents (Attachment 3). KAR 88-23-7, transcript, certificate, and registration fees.

She stated the regulation covers proprietary schools and is a totally fee funded program that will have an economic impact of approximately \$35,000 per year. In answer to questions, she stated that proposed fees are at one-half of the maximum allowable under HB 2009. There being no other questions, Chairman Holmes thanked Ms. Prewitt for her presentation before the Committee.

Chairman Holmes called on Kraig Knowlton to address proposed rules and regulations noticed for hearing by the Department of Administration, KAR 1-6-23, reemployment.

Mr. Knowlton stated that the changes were being proposed to implement the Kansas Employee Preference Program, as directed by the Governor's Executive Order 03-07. He stated that several changes will be made to the regulation as a result of information acquired at the public hearings. Committee members requested that a summary of the SRS layoffs and also a summary of how many people have exercised preference to this point be made available to them. Mr. Knowlton agreed to provide this information to the Committee and was thanked by Chairman Holmes for appearing.

Linden G. Appel, Chief Legal Counsel, Kansas Department of Corrections, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Corrections (Attachments, 4, 5, and 6). KAR 44-6-115a, awarding and withholding good time credits for incarcerated offenders; KAR 44-12-1002, violation of published internal management policies and procedures or of published orders; and KAR 44-13-201b, summary judgment procedure.

In response to a member's question, Mr. Appel gave examples of what a class II disciplinary offense could be. He further explained the reason for KAR 44-12-1002 to enforce prohibitive provisions contained in the Internal Management Policy and Procedures (IMPP) manual. Staff pointed out that the wording of the regulation has the effect of making the IMPP rules and regulations without having to follow the Rules and Regulations Filing Act. Mr. Appel agreed and cited Court of Appeals and Supreme Court decisions that recognize the contents of the IMPP to be enforceable as rules and regulations are enforceable.

While not a subject of these proposed rules and regulations, members had concerns about the manner in which the prohibition against smoking was implemented in correctional facilities. Most particularly, members pointed to security issues that affect the safety of staff, as well as of inmates. Mr. Appel stated that he did not believe that cigarettes had become a major contraband problem. He did comment on a couple of instances involving inmates on work details outside the institutions attempting to acquire cigarettes with the assistance of persons on the outside.

Chairman Holmes thanked Mr. Appel for his presentation.

Chairman Holmes recognized Chris Tymeson, Legal Counsel, Department of Wildlife and Parks, to speak on proposed rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 115-4-4, big game; legal equipment and taking methods; KAR 115-4-6, deer; management units; KAR 115-18-8, retrieval and possession of game animals, sport fish, and migratory game birds; KAR 115-25-19, doves; management unit, hunting season, shooting hours, and bag and possession limits; and KAR 114-25-20, sandhill crane; management unit, hunting season, shooting hours, bag and possession limits, and permit validation.

Mr. Tymeson stated that the Commission has withdrawn KAR 115-4-4. A request was made of Mr. Tymeson to research who is eligible to hunt on Fort Leavenworth property and how permits to do so are obtained. Regarding KAR 115-18-8, retrieval and possession of game animals, sport fish, and migratory birds, a member asked about how this regulation would be made applicable to sport fish. The member expressed particular concern about wasting and fish management of private ponds. Discussion on this point brought out the fact

that the Department does not exercise authority over private ponds. Chairman Holmes thanked Mr. Tymeson for appearing before the Committee.

Jennifer Springer, Behavioral Sciences Regulatory Board, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-3-3a, educational requirements. There being no questions, Chairman Holmes thanked Ms. Springer for her presentation.

Chairman Holmes asked Bill Wolff, Kansas Legislative Research Department, to review the rules and regulations previously reviewed by the Committee as proposed rules and regulations and now filed as permanent rules and regulations for the following agencies:

Department of Administration
Board of Nursing
Department of Agriculture
Kansas Corporation Commission
Department of Education
Board of Healing Arts
State Employees Health Care Commission
Department Of Health and Environment
Insurance Department
Board of Pharmacy
Racing and Gaming Commission
Real Estate Appraisal Board
Department of Revenue
Department Of Social and Rehabilitation Services
Department of Agriculture, Division of Water Resources
Department Of Wildlife and Parks

The meeting was recessed until 1:30 p.m.

Afternoon Session

The Chairman reconvened the meeting at 1:30 p.m. and called upon David Pope and Leland Rolfs to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture, Division of Water Resources, for Groundwater Management District (GMD) No. 5. KAR 5-25-1, definitions; KAR 5-25-2, well spacing; KAR 5-25-2a, change in point of diversion; KAR 5-25-3, reasonable appropriation; KAR 5-25-4, sustainable yield; KAR 5-25-5, well equipment; KAR 5-25-8, waste of water; KAR 5-25-10, test holes and water quality analyses; KAR 5-25-11; determination of well locations; KAR 5-25-12, approval of application for additional rate only; KAR 5-25-13, term permits; KAR 5-25-14, battery of wells; KAR 5-25-15, exemptions for up to 15 acre-feet of groundwater; KAR 5-25-16, water quality analyses and observation wells in the Rattlesnake Creek; KAR 5-25-17, voluntary reductions of water rights in the Rattlesnake Creek sub-basin; KAR 5-25-18, changes of well

locations within the Rattlesnake Creek basin; KAR 5-25-19, saturated thickness map; and KAR 5-25-20, recommendations by the board.

Mr. Rolfs noted that the proposed rules and regulations for GMD No. 5 complete the updating on groundwater management district regulations. Some decisions do remain to be made regarding GMD No. 3. There being no substantive concern with the proposed rules and regulations, Mr. Pope and Mr. Rolfs were thanked by the Chairman for their presentation to the Committee.

Chairman Holmes asked for action on the minutes of the previous meeting, May 1, 2003. One correction was noted, changing Representative Cindy Ruff to Representative Candy Ruff. *Representative Ruff moved to approve the minutes for May 1 as amended and Representative Pauls seconded the motion. Motion carried.*

After Committee discussion, the following tentative interim meeting dates were set, subject to approval by the Legislative Coordinating Council: July 15 primary, and July 14 if two days are necessary; August 29 primary, and August 28 if two days are necessary; October 8 primary, and October 9 if two days are necessary; November 20 primary, and November 21 if two days are necessary; and November 16 primary, and November 17 if two days are necessary.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning medical assistance-prior authorization, scope of home health services, and adult care home program. After discussion, the Committee had no comment.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transcripts, certificates, and registration fees. After discussion, the Committee had no comment.

Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning educational requirements-professional counselors. After discussion, the Committee had no comment.

Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning recruiting and staffing. After discussion, the Committee had no comment.

Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning good time credits, violations of internal management policies and procedures, and summary judgment procedures. After discussion, the Committee expressed the following comment.

General Comment. Are there due process questions that arise from incorporating the Internal Management Policies and Procedures into administrative rules and regulations?

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning big game legal equipment and taking methods and deer management areas. After discussion, the Committee expressed the following comment.

KAR 115-18-8. As concerns sport fish, consider an exemption from "wasting" for fish management purposes in private ponds.

Division of Water Resources, Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Groundwater Management District No. 5. After discussion, the Committee had no comment.

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning underground hydrocarbon storage wells and associated brine ponds and natural gas storage wells. After discussion, the Committee expressed the following comment.

KAR 28-45-2a. In subsection (k), is the definition of "freshwater" for this set of regulations consistent with its use or definition in other Kansas law and regulations? In subsection (p), should crude oil be included in the definition of "liquified petroleum gas?" (See also 28-45a-1.) Finally, should a definition of "natural gas" be included?

KAR 28-45-4a. Is it possible to protect the public health, safety, and environment by allowing the re-entry of a plugged LPG or hydrocarbon storage well? (See also Article 45a.) Is the opening of a previously plugged well to be considered re-entry or is it a new well?

KAR 28-45-5a. Rephrase subsection (e) (1)(2) to clarify the time when a compliance schedule has been completed.

KAR 28-45-6a. In subsection (c)(2) and elsewhere in this Article, as well as where appropriate in Article 45a, include reasons for a denial. In subsection (h)(2), the adoption by reference contains a second document which also should be adopted by reference. In subsection (j) and elsewhere in this Article as well as where appropriate in Article 45a, the Secretary should review the use of "secretarial discretion" and, when appropriate, convert those items allowed under that authority into administrative rules and regulations. Does the language in subsection (o)(1) allow for the use of Dakota water for product transfer?

KAR 28-45-7a. In subsection (c) and elsewhere in this Article, as well as where appropriate in Article 45a, the public notice also should be published in the *Kansas Register*.

KAR 28-45-10a. In this regulation and elsewhere in this Article, as well as where appropriate in Article 45a, siting requirements should make provision for flood plains.

KAR 28-45-12. In this regulation and elsewhere in this Article, as well as where appropriate in Article 45a, review the availability of information for security purposes. (KSA 45-221 (45).) Does there need to be a change in law to accommodate security issues?

KAR 28-45-14. A definition of "usable water" should be added to the definition section in KAR 28-45-2a.

KAR 28-45-15. Refer to a "licensed" professional land surveyor.

KAR 28-45-17. In subsection (l) and elsewhere in this Article, as well as where appropriate in Article 45a, consider rewriting to reduce the tolerance level for chlorides. In subsection (j) and elsewhere in this Article, as well as where appropriate in Article 45a, the reference to "combustible gas" should include "hydrocarbons."

KAR 28-45-28. In subsection (l), clarify that the rate applies to the leak return system.

KAR 28-45a-11. Did the Department consider restricting access to these facilities?

KAR 28-45a-12. How is a mechanical integrity test performed when the area between the casings is filled with cement? (See also KAR 28-45a 14 (e).)

General Comment. The Committee appreciates the good work done on the economic impact statement associated with these two sets of rules and regulations.

The meeting was adjourned.

Prepared by Judy Glasgow and Bill Wolff

Approved by Committee on:

July, 15, 2003